

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

JEFFREY ALEXANDER STEWART, #52301-177, MOVANT,	§ § § § § § § § § §	§ CIVIL CASE No. 3:20-CV-1450-D-BK § (CRIMINAL CASE No. 3:15-CR-543-D-3)
V. UNITED STATES OF AMERICA, RESPONDENT.		

**FINDINGS, CONCLUSIONS AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

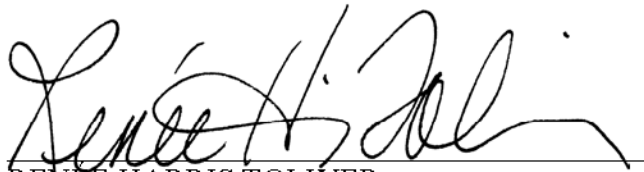
Pursuant to [28 U.S.C. § 636\(b\)](#) and *Special Order 3*, this *pro se* motion to vacate, set aside, or correct sentence under [28 U.S.C. § 2255](#) was referred to the United States Magistrate Judge for case management, including the issuance of findings and a recommended disposition when appropriate. For the reasons that follow, this action should be **DISMISSED WITHOUT PREJUDICE** for failure to comply with a court order.

Because Stewart's letter-motion was insufficient to state a claim for relief, on July 28, 2020, the Court issued a second deficiency order. *See* Rule 2 of the Rules Governing 2255 cases (setting out the pleading requirements and providing that the motion must "substantially follow" the form appended or a form prescribed by Local Rule). The order required Stewart to amend his letter-motion seeking habeas relief, using the Section 2255 form, so that it contained all claims that he wishes to raise with respect to his conviction in No. 3:15-CR-543-D-3. [Doc. 6](#). The deadline for Stewart's response was August 25, 2020. As of the date of this recommendation, however, Stewart has not responded to the Court's deficiency order, nor has he sought an extension of time to do so.

Rule 41(b) of the Federal Rules of Civil Procedure allows a court to dismiss an action *sua sponte* for failure to prosecute or comply with the federal rules or any court order. *Larson v. Scott*, 157 F.3d 1030, 1031 (5th Cir. 1998). “This authority flows from the court’s inherent power to control its docket and prevent undue delays in the disposition of pending cases.” *Boudwin v. Graystone Ins. Co., Ltd.*, 756 F.2d 399, 401 (5th Cir. 1985) (citing *Link v. Wabash R.R. Co.*, 370 U.S. 626 (1962)).

Stewart has been given ample opportunity to respond to the Court’s order. He has impliedly refused or declined to do so. Consequently, this action should be **DISMISSED WITHOUT PREJUDICE** for failure to comply with a court order and for lack of prosecution. See *FED. R. CIV. P. 41(b)* (an involuntary dismissal “operates as an adjudication on the merits,” unless otherwise specified).¹

SO RECOMMENDED on September 15, 2020.



RENEE HARRIS TOLIVER
UNITED STATES MAGISTRATE JUDGE

¹The 1996 amendments to the habeas corpus statute impose a one-year statute of limitations for filing a motion to vacate sentence, see 28 U.S.C. § 2255(f), that applies to any subsequent petition filed in this court.

**INSTRUCTIONS FOR SERVICE AND
NOTICE OF RIGHT TO APPEAL/OBJECT**

A copy of this report and recommendation will be served on all parties in the manner provided by law. Any party who objects to any part of this report and recommendation must file specific written objections within 14 days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b). An objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's report and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996), *modified by statute*, 28 U.S.C. § 636(b)(1) (extending the time to file objections to 14 days).